

ORIGINAL

FILED
U.S. DISTRICT COURT
SAVANNAH DIV.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

2006 SEP 22 AM 11:23

CLERK *M. Janes*
SO. DIST. OF GA.

BOBBY CHARLES BATTLE,

Plaintiff,

vs.

CIVIL ACTION NO.: CV505-030

REBECCA LOWMAN; Ms. BREWER,
Nurse; Dr. FERRA and TONY
HOWERTON, Warden,

Defendants.

O R D E R

After an independent review of the record, the Court concurs with the Report and Recommendation of the Magistrate Judge, to which Plaintiff has filed Objections. In his Objections, Plaintiff reasserts the factual contentions of his complaint and recounts his several claims of deficiency in examinations and medical consultations performed by medical personnel at Ware State Prison. Plaintiff alleges that Defendants failed to provide him with adequate physical examinations and failed to refer him to appropriate medical professionals. Plaintiff further alleges that Defendant Howerton was aware of these failures and was deliberately indifferent to such.

Despite Plaintiff's contentions that he has failed to receive adequate medical treatment, by his own admission he was treated for back, kidney, and foot problems by medical personnel at Ware State Prison three (3) times in less than two (2) weeks in August of 2003 (Obj. at 21-25). Plaintiff remains unable to offer any evidence that

Defendants intentionally refused to treat him when requested. Construing the Plaintiff's Complaint liberally, Plaintiff has merely established a difference of opinion regarding his treatment. A mere difference of opinion as to a prisoner's diagnosis or course of treatment does not support a deliberate indifference claim under the Eighth Amendment. See Harris v. Thigpen, 941 F.2d 1495, 1505 (11th Cir. 1991).

Plaintiff's Objections are without merit. The Magistrate Judge's Report and Recommendation is adopted as the opinion of the Court. The Motion for Summary Judgment filed by Defendants Brewer, Ferra, and Howerton (Dkt. No. 26) is **GRANTED** and Plaintiff's claims against those Defendants are **DISMISSED**.

The Court concurs with the Magistrate Judge that dismissal of the claim against Defendant Lowman for lack of service is not appropriate. Because Defendant Lowman did not join the Motion for Summary Judgment, but merely moved for dismissal, Plaintiff's claim against Defendant Lowman remains pending at this time.

SO ORDERED, this 22nd day of SEPTEMBER, 2006.



WILLIAM T. MOORE, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA